

## Securities and Exchange Commission

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order that imposes a sanction while denying the allegations in the complaint or order for proceedings. In this regard, the Commission believes that a refusal to admit the allegations is equivalent to a denial, unless the defendant or respondent states that he neither admits nor denies the allegations.

(f) In the course of the Commission's investigations, civil lawsuits, and administrative proceedings, the staff, with appropriate authorization, may discuss with persons involved the disposition of such matters by consent, by settlement, or in some other manner. It is the policy of the Commission, however, that the disposition of any such matter may not, expressly or impliedly, extend to any criminal charges that have been, or may be, brought against any such person or any recommendation with respect thereto. Accordingly, any person involved in an enforcement matter before the Commission who consents, or agrees to consent, to any judgment or order does so solely for the purpose of resolving the claims against him in that investigative, civil, or administrative matter and not for the purpose of resolving any criminal charges that have been, or might be, brought against him. This policy reflects the fact that neither the Commission nor its staff has the authority or responsibility for instituting, conducting, settling, or otherwise disposing of criminal proceedings. That authority and responsibility are vested in the Attorney General and representatives of the Department of Justice.

[25 FR 6736, July 15, 1960, as amended at 37 FR 23829, Nov. 9, 1972; 37 FR 25224, Nov. 29, 1972; 44 FR 50835, Aug. 30, 1979; 46 FR 47532, Sept. 29, 1981; 47 FR 26822, June 22, 1982; 54 FR 24332, June 7, 1989; 59 FR 5945, Feb. 9, 1994; 73 FR 32227, June 5, 2008]

### **§ 202.6 Adoption, revision, and rescission of rules and regulations of general application.**

(a) The procedure followed by the Commission in connection with the adoption, revision, and rescission of rules of general application necessarily varies in accordance with the nature of the rule, the extent of public interest therein, and the necessity for speed in its adoption. Rules relating to Commis-

sion organization, procedure and management, for example, are generally adopted by the Commission without affording public discussion thereof. On the other hand, in the adoption of substantive rules materially affecting an industry or a segment of the public, such as accounting rules, every feasible effort is made in advance of adoption to receive the views of persons to be affected. In such cases, proposals for the adoption, revision, or rescission of rules are initiated either by the Commission or by members of the public, and to the extent practicable, the practices set forth in paragraph (b) of this section are observed.

(b) After preliminary consideration by the Commission a draft of the proposed rule is published in the FEDERAL REGISTER and mailed to interested persons (e.g., other interested regulatory bodies, principal registrants or persons to be affected, stock exchanges, professional societies and leading authorities on the subject concerned and other persons requesting such draft) for comments. Unless accorded confidential treatment pursuant to statute or rule of the Commission, written comments filed with the Commission on or before the closing date for comments become a part of the public record upon the proposed rule. The Commission, in its discretion, may accept and include in the public record written comments received by the Commission after the closing date.

(c) Following analysis of comments received, the rule may be adopted in the form published or in a revised form in the light of such comments. In some cases, a revised draft is prepared and published and, where appropriate, an oral hearing may be held before final action upon the proposal. Any interested person may appear at the hearing and/or may submit written comment for consideration in accordance with the Commission's notice of the rule-making procedure to be followed. The rule in the form in which it is adopted by the Commission is publicly released

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and is published in the FEDERAL REGISTER.

(Sec. 19(a), 48 Stat. 908; sec. 23(a), 48 Stat. 901; sec. 20(a), 49 Stat. 833; sec. 319(a), 53 Stat. 1173; sec. 38(a), 54 Stat. 841; sec. 211(a), 54 Stat. 855; (15 U.S.C. 77s(a), 78w(a), 78t(a), 77sss(a), 80a–37(a), 80b–11(a))

[25 FR 6736, July 15, 1960, as amended at 44 FR 35208, June 19, 1979]

### § 202.7 Submittals.

(a) All required statements, reports, applications, etc. must be filed with the principal office of the Commission unless otherwise specified in the Commission's rules, schedules and forms. Reports by exchange members, brokers and dealers required by § 240.17a–5 of this chapter under the Securities Exchange Act of 1934 must be filed with the appropriate regional office as provided in § 230.255(a) of this chapter under the Securities Act of 1933, and with the principal office of the Commission and the appropriate regional office as provided under § 240.17a–5(a) *et seq.* of this chapter under the Securities Exchange Act of 1934.

(b) *Electronic filings.* All documents required to be filed in electronic format with the Commission pursuant to the federal securities laws or the rules and regulations thereunder shall be filed at the principal office in Washington, DC via EDGAR by delivery to the Commission of a magnetic tape or diskette, or by direct transmission.

[41 FR 44699, Oct. 12, 1976, as amended at 58 FR 14659, Mar. 18, 1993; 59 FR 5945, Feb. 9, 1994; 73 FR 32227, June 5, 2008]

### § 202.8 Small entity compliance guides.

The following small entity compliance guides are available to the public from the Commission's Publications Room and regional offices:

(a) *Q & A: Small Business and the SEC.*<sup>1</sup>

(b) *The Work of the SEC.*<sup>1</sup>

(c) *Broker-Dealer Registration Package.*

(d) *Investment Adviser Registration Package.*

(e) *Investment Company Registration Package.*

<sup>1</sup>These items are also available on the Securities and Exchange Commission Web site on the Internet, <http://www.sec.gov>.

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(f) *Examination Information for Broker-Dealers, Transfer Agents, Investment Advisers and Investment Companies.*

[62 FR 4105, Jan. 28, 1997]

### § 202.9 Small entity enforcement penalty reduction policy.

The Commission's policy with respect to whether to reduce or assess civil money penalties against a small entity is:

(a) The Commission will consider on a case-by-case basis whether to reduce or not assess civil money penalties against a small entity. In determining whether to reduce or not assess penalties against a specific small entity, the following considerations will apply:

(1) Except as provided in paragraph (a)(3) of this section, penalty reduction will not be available for any small entity if:

(i) The small entity was subject previously to an enforcement action;

(ii) Any of the small entity's violations involved willful or criminal conduct; or

(iii) The small entity did not make a good faith effort to comply with the law.

(2) In considering whether the Commission will reduce or refrain from assessing a civil money penalty, the Commission may consider:

(i) The egregiousness of the violations;

(ii) The isolated or repeated nature of the violations;

(iii) The violator's state of mind when committing the violations;

(iv) The violator's history (if any) of legal or regulatory violations;

(v) The extent to which the violator cooperated during the investigation;

(vi) Whether the violator has engaged in subsequent remedial efforts to mitigate the effects of the violation and to prevent future violations;

(vii) The degree to which a penalty will deter the violator or others from committing future violations; and

(viii) Any other relevant fact.

(3) The Commission also may consider whether to reduce or not assess a civil money penalty against a small entity, including a small entity otherwise excluded from this policy under paragraphs (a)(1) (i)–(iii) of this section, if the small entity can demonstrate to